



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gene Bassette, et al. - Seasonal Employees - Per Diem
Entitlement

File: B-219013

Date: September 29, 1986

DIGEST

Eleven seasonal employees of the Forest Service's Northern Region claim per diem for a 3-month assignment to fight fires in the Southwestern Region from April to July 1983. The Forest Service denied per diem under the Northern Region's Supplement to Federal Travel Regulations (FTR) para. 1-1.3 which provides that when a seasonal employee is assigned to a new location for over 2 weeks, the new location becomes the employee's official station. The denial of per diem is sustained. The Supplement is a valid exercise of discretion and is consistent with the FTR and our decisions.

DECISION

This decision is in response to a request from Mr. C.E. Tipton, Authorized Certifying Officer, Forest Service, United States Department of Agriculture, as to whether 11 seasonal employees of the Forest Service are entitled to per diem for approximately 3 months at a seasonal worksite in Sacramento, New Mexico.^{1/} For the reasons hereafter stated, we conclude that per diem allowances may not be paid the 11 seasonal employees for the 3-month tour of duty at Sacramento, New Mexico.

FACTUAL BACKGROUND

After the 1982 fire season, the Southwestern Region of the Forest Service decided to disband a fire crew from the Coronado National Forest and establish a new crew at the Lincoln National Forest with its official duty station at Sacramento, New Mexico, because of better accessibility to fires. All members of the 1982 crew were given an opportunity to relocate to the new site, but only 2 members of the

^{1/} The 11 employees are: Gene L. Bassette, Michael J. Brick, Scott W. Chehock, Kenneth W. Heare, Larry L. Lackner, Philip A. Mason, M. Bradley Morigeau, Donald C. Rees, James W. Stephens, Ernest R. Trujillo, and Everett A. Weniger.

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20-person crew chose to do so. The Director of the Forest Service's Northern Region suggested that, rather than hire inexperienced firefighters for the normal fire season of April 1 to July 15, 1983, the vacant positions be filled with the Northern Region's unemployed smokejumpers who traditionally are not employed by the Forest Service during this time period. The Northern Region's fire season begins later in the year than the Southwestern Region's. The Southwestern Region accepted the proposal provided the employees were reassigned, as the cost of a detail in excess of 100 days would be prohibitive.

The Northern Region's smokejumpers were GS-6's with career or career conditional appointments and a guaranteed tour of duty of 6 pay periods (12 weeks) per year. They were in intermittent status for the balance of the year and could be called to duty. Rather than reappoint the smokejumpers as ground attack firefighters (GS-3 or GS-4) for the period of reassignment, it was decided to keep them under their regular appointments at GS-6 so that they could be activated into a smokejumper crew if necessary.

The actual assignment began on March 20, 1983, when 14 smokejumpers (11 of whom have filed a claim) reported for duty at Missoula, Montana. They received 1-week refresher smokejumping training. On March 28, 1983, under written travel orders, they departed the Northern Region for transfer to Sacramento, New Mexico. Personnel actions were processed establishing Sacramento as the new official duty station effective April 3, 1983. All 11 claimants worked out of the Sacramento Work Center as members of the firefighting crew until they returned to the Northern Region on July 9 and 10. At that time, their official duty station was changed by personnel action to various sub-bases in the Northern Region.

The transferred employees were volunteers. They were given prior notice that they would not receive per diem and they were required to sign a waiver foregoing per diem benefits before they could be selected. The claimants state that they objected to the waiver requirement, but signed under duress because they needed the early season employment.

Claimants state that they were advised by management officials that housing at Sacramento would be provided at no cost, but on arrival they were told they would have to pay for their quarters. Also when they arrived they discovered that groceries and supplies could be obtained only at

Alamagordo, New Mexico, a 3-hour round trip over poor roads. They were not paid per diem while at Sacramento, but they did receive it when they traveled to fight fires away from Sacramento and also for their travel to and from Sacramento.

CLAIMANTS' ARGUMENT

The claimants contend they were on temporary duty at Sacramento while away from their regular duty station and are, therefore, entitled to per diem for that period. They believe their duty station was unreasonably changed by the Forest Service specifically to deny them per diem. They also feel that they were coerced into signing the "waiver" of per diem. Finally, they were disgruntled because another group of Missoula smokejumpers detailed to Silver City, New Mexico, for 3 months was granted per diem.

The attorney for the 11 claimants argues that Missoula, Montana, was their official duty station during their 1983 detail to Sacramento, New Mexico, because that is where they spent the major part of their time. He cites our decisions for the longstanding rule that the official station of an employee is a matter of fact and not merely administrative designation and that it is the place where the employee performs the major part of his duties and is expected to spend the greater part of his time. Gretchen Ernst, B-192838, March 16, 1979. See also 32 Comp. Gen. 87 (1952) and 58 Comp. Gen. 744 (1979).

The attorney also argues that our decisions have placed great weight on the duration of an assignment (33 Comp. Gen. 98 (1953)) and that the 3 months involved here was well within the duration reasonably considered to be temporary (36 Comp. Gen. 757 (1957) and 57 Comp. Gen. 147 (1977)). Therefore, he concludes that under 5 U.S.C. § 5702(a) and the Federal Travel Regulations, the claimants are entitled to per diem for the detail period.

AGENCY'S ARGUMENT

The Forest Service contends that Sacramento, New Mexico, was the employees' official duty station and that they may not be paid per diem. In the Forest Service's view, the critical issue is whether it can distinguish between the duration of seasonal and permanent appointments when designating an official station.

The Forest Service points out that the smokejumpers were seasonal employees with a guaranteed duty tour of 6 pay periods (12 weeks) of employment each year and were in intermittent status for the rest of the year. The decision to relocate these employees to Sacramento was made in accordance with the Northern Region's Supplement to the Federal Travel Regulations (FTR), para. 1-1.3. The Supplement provides for all temporary and WAE (When Actually Employed) employees that:

"Assignments away from the official station planned to exceed 2 weeks at one location will be considered as a reassignment. This new location will be established as the official duty station by personnel action."

The Northern Region's Supplement to FTR 1-1.3 has been in effect since 1977. The Forest Service states that, following a series of congressional inquiries, there was a clear need to clarify for seasonal employees what constitutes a change of station versus a detail for temporary duty. The resulting Supplement was developed with input and concurrence from the unions and from management officials and, according to the Forest Service, has worked well since then without complaints or grievances.

The Forest Service does not take issue with our decisions on the duration of temporary duty assignments cited by the claimants, but points out that these decisions pertain to permanent, not seasonal, employees and that the Northern Region's Supplement to the FTR recognizes the essential difference between the duration of seasonal and permanent appointments.

As to the claimants' complaint about the smokejumpers detailed to Silver City who did receive per diem, the Forest Service states that those smokejumpers, in contrast to claimants, were essentially full-time employees who spent the greater part of their time in the Northern Region. They were not seasonal employees and were covered by different regulations.

OPINION

We must agree with the Forest Service on this matter because we are unable to find that the Northern Region's Supplement to paragraph 1-1.3 of the Federal Travel Regulations, FPMR

101-7, incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR), is arbitrary, capricious, or an abuse of discretion. The Supplement is consistent with the governing Federal Travel Regulations and with our decisions.

As recognized by both parties, this Office has long held that the location of an employee's official duty station is a question of fact, not limited by the agency's designation, to be determined from the orders directing the assignment, and from the nature and duration of the assignment.

Frederick C. Welch, 62 Comp. Gen. 80 (1982). We have stated that the duration and nature of the duties assigned are of particular importance in making the determination of whether an assignment to a particular duty station is a permanent change of station. 36 Comp. Gen. 757 (1957); 33 Comp. Gen. 98 (1953). We have also determined that there is no hard and fast rule as to the length of time which an employee may be entitled to subsistence at a particular place. It is dependent not so much on the length of time as upon the nature of the duties and whether, as a matter of fact, that place constitutes his permanent duty station or a temporary assignment. 18 Comp. Gen. 423, 424 (1938). The actual facts in each case are controlling.

The length of the claimants' assignment to Sacramento (approximately 3 months) would not be of such duration as to raise a prima facie question concerning the validity of an agency designation as temporary duty. However, we have recently recognized the significant difference between permanent employees and seasonal employees for per diem purposes. In Daisy Levine, 63 Comp. Gen. 225 (1964), the Department of the Interior had hired seasonal employees to serve approximately 5 months beginning in April 1983 on an archeological field survey at Chaco Canyon, New Mexico. We held that, since the seasonal employees were assigned to duty and performed their actual work at Chaco Canyon, it was their official duty station for purposes of 5 U.S.C. § 5702 and payment of per diem there was not authorized.

Similarly, in the present case, we conclude that the Sacramento Work Center was properly designated as the smokejumpers' official station for the period in question since they performed their actual duties there. As seasonal employees, they were subject to the Northern Region's Supplement to FTR para. 1-1.3. Since the assignment to the Southwestern Region was for more than 2 weeks, the Forest Service properly designated the Sacramento Work Center as their official station for the period of the assignment.

Accordingly, the claimants are not entitled to per diem payments for the 3-month period in question.

for Milton L. Fowler
Comptroller General
of the United States